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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ML DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVE OLSON,
Inmate Booking No. 12540741,

Plaintiff,

vs.

CDCR; SCOTT SAGE;
TERESA MILLER; TERESA AYALA;
AGENT MILLER,

Defendants.

Civil No. 12-1502 BEN (BLM)

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS, IMPOSING
NO INITIAL PARTIAL FILING FEE
AND GARNISHING BALANCE
FROM PRISONER'S TRUST
ACCOUNT PURSUANT
TO 28 U.S.C. § 1915(a)
[ECF No. 5]**

AND

**(2) DISMISSING FIRST AMENDED
COMPLAINT FOR FAILING TO
STATE A CLAIM AND SEEKING
MONETARY DAMAGES AGAINST
IMMUNE DEFENDANTS**

Steve Olson ("Plaintiff"), an inmate currently housed at the George Bailey Detention Facility located in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. However, before the Court could conduct the required sua sponte screening, Plaintiff filed a First Amended Complaint which is now the operative pleading. (ECF No. 6.)

1 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead he
 2 has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF
 3 No. 5).

4 I.

5 MOTION TO PROCEED IFP

6 All parties instituting any civil action, suit, or proceeding in a district court of the United
 7 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
 8 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee
 9 only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*
 10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner granted leave to proceed IFP
 11 remains obligated to pay the entire fee in installments, regardless of whether his action is
 12 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847
 13 (9th Cir. 2002).

14 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”), a
 15 prisoner seeking leave to proceed IFP must submit a “certified copy of the trust fund account
 16 statement (or institutional equivalent) for the prisoner for the six-month period immediately
 17 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113,
 18 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial
 19 payment of 20% of (a) the average monthly deposits in the account for the past six months, or
 20 (b) the average monthly balance in the account for the past six months, whichever is greater,
 21 unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The
 22 institution having custody of the prisoner must collect subsequent payments, assessed at 20% of
 23 the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and
 24 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 25 § 1915(b)(2).

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1 The Court finds that Plaintiff has submitted a certified copy of his trust account statement
 2 pursuant to 28 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2. *Andrews*, 398 F.3d at 1119.
 3 Plaintiff's trust account statement shows he has insufficient funds with which to pay any initial
 4 partial filing fee. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be
 5 prohibited from bringing a civil action or appealing a civil action or criminal judgment for the
 6 reason that the prisoner has no assets and no means by which to pay [an] initial partial filing
 7 fee"); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve"
 8 preventing dismissal of a prisoner's IFP case based solely on a "failure to pay . . . due to the lack
 9 of funds available").

10 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (ECF No. 5), and
 11 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350
 12 balance of the filing fees mandated shall be collected and forwarded to the Clerk of the Court
 13 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

14 II.

15 SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)

16 The PLRA also obligates the Court to review complaints filed by all persons proceeding
 17 IFP and by those, like Plaintiff, who are "incarcerated or detained in any facility [and] accused
 18 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 19 conditions of parole, probation, pretrial release, or diversionary program," "as soon as
 20 practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2) & 1915A(b). Under these provisions
 21 of the PLRA, the Court must sua sponte dismiss complaints, or any portions thereof, which are
 22 frivolous, malicious, fail to state a claim, or which seek damages from defendants who are
 23 immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) & 1915A; *Rhodes v. Robinson*, 621 F.3d 1002, 1004
 24 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th
 25 Cir. 2000) (en banc) (§ 1915(e)(2)).

26 "[W]hen determining whether a complaint states a claim, a court must accept as true all
 27 allegations of material fact and must construe those facts in the light most favorable to the
 28 plaintiff." *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see also Barren v. Harrington*,

1 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of Federal
 2 Rule of Civil Procedure 12(b)(6)”). In addition, courts “have an obligation where the petitioner
 3 is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the
 4 petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citing
 5 *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)). The court may not, however, “supply
 6 essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of*
 7 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory allegations of official
 8 participation in civil rights violations are not sufficient to withstand a motion to dismiss.” *Id.*

9 As currently pleaded, it is clear that Plaintiff’s First Amended Complaint fails to state a
 10 cognizable claim under 42 U.S.C. § 1983. Section 1983 imposes two essential proof
 11 requirements upon a claimant: (1) that a person acting under color of state law committed the
 12 conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or
 13 immunity protected by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983;
 14 *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th
 15 Cir. 1985) (en banc).

16 A. Rule 8

17 An initial review of Plaintiff’s First Amended Complaint demonstrates that Plaintiff has
 18 failed to comply with Rule 8. Specifically, Rule 8 provides that in order to state a claim for
 19 relief in a pleading, it must contain “a short and plain statement of the grounds for the court’s
 20 jurisdiction” and “a short and plain statement of the claim showing that the pleader is entitled
 21 to relief.” FED. R. CIV. P. 8(a)(1) & (2). Plaintiff’s pleading is disjointed and fails to clearly set
 22 forth any specific factual allegations against any of the named Defendants.

23 B. Fourteenth Amendment Claims

24 While far from clear, it appears that Plaintiff is claiming that Defendants placed unfair
 25 parole conditions on him and he disputes the number of criminal charges he has been convicted
 26 of in the past. (*See* FAC at 2-3.) First, to the extent Plaintiff seeks injunctive relief in the form
 27 of a court order allowing for release from his current confinement, such relief is not available
 28 under 42 U.S.C. § 1983. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that

1 “when a state prisoner is challenging the very fact or duration of his physical imprisonment, and
2 the relief he seeks is a determination that he is entitled to immediate release . . . his sole federal
3 remedy is a writ of habeas corpus”).

4 Second, to the extent Plaintiff seeks monetary damages against either California
5 Department of Corrections and Rehabilitation officials or the Board of Prison Terms to attack
6 the constitutionality of parole officials’ decision to place conditions on his parole, he cannot do
7 so unless and until he can show that the parole hearing has already been invalidated by a direct
8 appeal or other habeas corpus proceedings.¹ See *Heck v. Humphrey*, 512 U.S. 475, 486-87
9 (1994); *Preiser*, 411 U.S. at 500. Under *Heck*, before Plaintiff may seek damages related to an
10 allegedly unconstitutional parole determination, he must allege facts to show that the parole
11 decision has already been: (1) reversed on direct appeal; (2) expunged by executive order; (3)
12 declared invalid by a state tribunal authorized to make such a determination; or (4) called into
13 question by the issuance of a writ of habeas corpus. 512 U.S. at 487. A civil rights claim
14 challenging the legality of a conviction or the length of confinement that has not been so
15 invalidated is not yet cognizable under § 1983. *Id.*; see also *Edwards v. Balisok*, 520 U.S. 641,
16 643 (1997). As such, Plaintiff’s parole-related due process claims for monetary damages must
17 be dismissed for failure to state a claim without prejudice to re-alleging them after the underlying
18 parole determination has been invalidated. *Edwards*, 520 U.S. at 649; *Trimble v. City of Santa*
19 *Rosa*, 49 F.3d 583, 585 (9th Cir. 1995).

20 III.

21 CONCLUSION AND ORDER

22 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

23 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No. 5) is
24 **GRANTED.**

25 2. The Watch Commander, or his designee, is ordered to collect from Plaintiff’s
26

27 ¹ Because Plaintiff’s First Amended Complaint is not clear, the Court is unable to determine the
28 nature of remedies Plaintiff is seeking against any of the named Defendants. However, if Plaintiff is
seeking to challenge the constitutionality of his parole revocation hearing by way of a new parole
hearing, he may be able to proceed in this § 1983 action. See *Wilkinson v. Dotson*, 544 U.S. 74, 82
(2005).

1 prison trust account the \$350 balance of the filing fee owed in this case by collecting monthly
2 payments from the trust account in an amount equal to twenty percent (20%) of the preceding
3 month's income credited to the account and forward payments to the Clerk of the Court each
4 time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL
5 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
6 ASSIGNED TO THIS ACTION.

7 3. The Clerk of the Court is directed to serve a copy of this order on Watch
8 Commander, George Bailey Detention Facility, 446 Alta Road, Suite 5300, San Diego,
9 California 92158.

10 **IT IS FURTHER ORDERED** that:

11 4. The case is **DISMISSED** without prejudice for failing to state a claim upon which
12 relief may be granted and for seeking money damages against immune Defendants. *See* 28
13 U.S.C. §§ 1915(e)(2) & 1915A(b).

14 5. Plaintiff is granted forty five (45) days from the date this Order is "Filed" in which
15 to file an amended complaint which addresses each deficiency of pleading noted above.
16 Plaintiff's Amended Complaint must be complete in itself without reference to the superseded
17 pleading. *See* S.D. CAL. CIV. L.R. 15.1. Defendants not named and all claims not re-alleged in
18 the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565,
19 567 (9th Cir. 1987).

20 6. The Clerk of Court is directed to mail a court approved form § 1983 complaint to
21 Plaintiff.

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23 DATED:  

24 HON. ROGER T. BENITEZ
25 United States District Judge
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